in regard to the disposition of the effects of insolvents among their creditors, or else that it was meant to attach to all such contracts intended to effect property here situated, wherever made.

But we think there is no plausibility in adopting either of these views. We have said that these provisions of the statute are of a character to indicate very clearly that they were designed to have operation only upon assignments made within the State; and they do not indicate any purpose of being applied to the property conveyed instead of the contract. They are regulations affecting a particular class of contracts, and not the general mode of transferring personal property for the benefit of creditors. There is more plausibility in the argument which attempts to apply them to all assignments of property for the benefit of creditors, than in that which would make them a portion of the fixed policy of the State, in regard to the disposition of property for the payment of debts of insolvent persons, whenever such property is found in the State, like, for instance, our rule of law requiring a delivery of the property, in order to put it beyond the reach of process.

The Louisiana cases cited go upon this ground; but we are not prepared to adopt this view even.

In every view which we are able to take of the case, we think the trustee was properly discharged, and, consequently, judgment is affirmed.

In the District Court for the City and County of Philadelphia.

MILLER *vs.* RIPKA.

The provision of the Pennsylvania Stay Law of May 21, 1861, directing the court to order that no execution shall issue against a defendant except at the periods when and in the proportions which it shall appear by a report of the prothonotary that the majority of his creditors, whose demands exceed two-thirds of his or their indebtedness, have agreed to extend the time of payment of the debts due them respectively, is a violation of the Constitution of the United States and of the State of Pennsylvania.

Rule to show cause why case should not be referred to the Prothonotary.

The opinion of the Court was delivered by

SHARSWOOD, P. J.—This is a motion on behalf of the defendant, under the provisions of the Act of 21st May, 1861, grounded upon an affidavit that a majority in number and two-thirds in value of their creditors had agreed to give him an extension; to refer it to the Prothonotary to report the terms of such extension. Upon such report being made, the act requires that the court shall order that no execution shall be issued, except in conformity with the terms of such extension.

The plaintiff in this case is one of the creditors who did not assent to the extension, and opposes such reference and order as a violation both of the Constitution of the United States and of the Commonwealth of Pennsylvania. By the tenth section of the first article of the former, it is provided that "no State shall pass any law impairing the obligation of contracts;" and by the seventeenth section of article nine of the latter, "that no *ex post facto* law, nor any law impairing contracts, shall be made."

It would be an affectation of learning to examine and discuss the bearing of the numerous decisions which have been made in the Federal and State Courts, upon this fruitful head of constitutional jurisprudence. It will be enough to state as the result of these cases, in brief, that legislation modifying or changing the remedies for breach of contract, does not infringe upon the constitutional limitation, unless it practically takes away or denies the right. Thus, to adduce an instance which seems at the same time fairly illustrative of the extent of the principle and its limitations, the legislature may shorten the period allowed by the statute of limitations for the commencement of actions, but not without giving some time for those having causes of action not as yet barred by existing laws, to avoid the effect of such limitation. It is undoubtedly competent for the legislature to declare that the limitation of action upon a note or book account shall hereafter be three years instead of six; but if they have failed to provide that those having claims upon note and book account, less than six and more than three years old, shall have the right to commence their actions within a certain reasonable period, the law, as to such cases, would be inoperative and void. In like

manner, the rules of evidence may be changed by the legislature, but not so as to destroy all remedy upon a subsisting valid contract. It would not be competent for them to provide that no contract shall be proved otherwise than by writing, or a subscribing witness, so as to act retrospectively. And, without doubt, provision may be made for delay in the prosecution of actions upon contracts, when such provisions are intended to afford the parties the opportunity of a full and deliberate hearing. Thus, the giving time for an appeal or writ of error, or for a motion for a new trial, are clearly constitutional. No doubt that laws have gone much further, and been upheld by the courts. The line upon this subject has not been drawn with that accuracy which would have been desirable. It would have been better, as Chancellor Kent has said, if the doctrine had been established, that all effectual remedies, affecting the interests and rights of the party, existing when the contract was made, became an essential ingredient in it, and are parcel of the creditor's rights, and ought not to be disturbed. The constitution meant to secure to every man his property, so far as it depended upon contract, and it would be a practical and flagrant violation of it to shut up the courts of justice and deny him all remedy; and, if so, every provision which embarrasses or delays him, without reference to ulterior proceedings connected with the determination of the cause, must necessaaily fall within the same principle. If you can abolish one process of execution, you may abolish all. If you may exempt some portion of his property, you may all. If you may suspend execution for one year, you may for twenty, or forever.

Let us take, however, the actual decisions of the Supreme Court of the United States, as bearing directly upon the case before us, and therefore forming an authoritative rule for us. In *Bronsen* vs. *Kinzie*, 1 Howard, 311, and *McCracken* vs. *Hayward*, 2 Id. 605, it was held by them, that a law of the State of Illinois, providing that a sale shall not be made of property levied on under an execution, unless it will bring two-thirds of its valuation, is, as to contracts made prior to its passage, unconstitutional and void. "The obligation of a contract," says Justice Baldwin, in delivering the opinion of the court, in the case last cited, "consists in its binding force on

the party who makes it." This depends on the laws in existence when it is made; these are necessarily referred to in all contracts, and forming a part of them, as the measure of the obligation to perfrom them by the one party, and the right acquired by the other. There can be no other standard by which to acertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other; hence, any law, which in its operation, amounts to a denial or obstruction of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution." This is the last decision of the Supreme Court, and went further, and was more unequivocal in its tone, than any one which preceded it.

It is true, that the Supreme Court of Pennsylvania, with these two cases before them, decided that the Act of Assembly of 1842, which provided for a stay of one year, in case the property levied on did not bring two-thirds of its appraised value, was constitutional. *Chadwick* vs. *Moore*, 8 W. & S. 49. Chief Justice Gibson distinguishes that law from the Illinois act, because it stayed the execution for a reasonable time; at least, that it was not so unreasonable as to call for judicial interposition. The case, he said, was by no means a clear one, and to put it in a train for ultimate decision in the Suprme Court of the United States, it was necessary for *them* to sustain the constitutionality of the law, which they deemed it their duty to do in all cases of doubt and difficulty. It would seem, according to the scope of the opinion, that the legislature are to determine, in the first instance, what is reasonable, subject to the review of the Supreme Court. If the case before us were precisely the same, we would feel bound to bow to this latest decision of our own immediate local superior, but the provisions of the act before us are essentially different. Two-thirds in value and a majority in number of the

creditors, decide what is reasonable, and the act gives the court no power to review their action. The stay ordered to be entered by the court must be in precise conformity to that reported as the terms of the agreement of the creditors. We cannot say that the act is constitutional as to such agreements as we deem reasonable, and unconstitutional as to such as we think unreasonable. Such a matter cannot be the subject of judicial discretion. We have no power to do what the legislature have not done—annex a proviso that the stay shall not exceed a certain limit. If it be true that the legislature may grant a reasonable stay, it is not reasonable to leave it to the decision of a majority in number and two-thirds in value of the creditors—a tribunal not recognized by law, and which may be unduly influenced in favor of the debtor. It must be competent for the plaintiff in each case to deny the *bona fides* of the assenting creditors; yet no provision is made by the law for the decision of that question, unless it be by the prothonotary, and no power of revision is given to the court over his determination.

On the whole, we are of opinion that this provision of the stay law is so clearly and palpably unconstitutional, that we ought not to refer the case before us to the Prothonotary.

Rule discharged.

In the New York Superior Court—Special Term.

IN THE MATTER OF WILLIAM H. DOBBS, A MINOR.

1. Under the act of Congress relating to the Military Establishment of the United States, the enlistment of a minor without the consent of his parent or guardian, is void, and he can be discharged by the State authorities upon writ of *habeas corpus*.
2. *Phelan's Case*, 9 Abbott, 286, dissented from.

The opinion of the Court, in which the facts fully appear, was delivered by

MURRAY HOFFMAN, J.—Upon *habeas corpus*, the return of an officer of the United States Army is, that the party detained was enlisted in the Army of the United States, on the twenty-eighth